

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

FILED
JUN 06 2012

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CLERK

DANIEL HANIC,

Petitioner,

-vs-

DOUGLAS WEBER, Warden,
South Dakota State Penitentiary,
and ATTORNEY GENERAL OF
THE STATE OF SOUTH DAKOTA,

Respondents.

CIV. 12-5010

ORDER

Petitioner, Daniel Hanic, an inmate at the Mike Durfee State Prison in Springfield, South Dakota, has filed a pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (Doc. 1). Hanic has filed several briefs (Docs. 5, 12 and 13), an Affidavit (Doc. 10) and a Response (Doc. 8) in support of his Petition. The Respondents have moved to dismiss Hanic's Petition because they assert it is untimely pursuant to the one year AEDPA statute of limitations. Mr. Hanic has been incarcerated periodically beginning in 1996, but the subject of his current § 2254 Petition is the 2006 decision of the South Dakota Board of Pardons and Paroles to revoke eight years of his "good time" credits. In his various filings, Hanic asserts he was unaware of the AEDPA statute of limitations because he had no access to law library materials or adequate legal assistance at the South Dakota State Penitentiary.

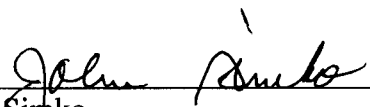
The Court takes judicial notice of Warden Weber's Affidavit in *Miller v. Weber*, Civ. 06-4083 (United States District Court, District of South Dakota) (copy attached without accompanying referenced documents), which outlines the history of legal assistance to inmates and the South Dakota DOC law libraries. Six years have passed since the *Miller* affidavit. Hanic asserts equitable tolling of the AEDPA statute of limitations applies because appropriate legal materials have not been available to him during his incarceration. An updated Affidavit is required.

Therefore, IT IS ORDERED:

Respondent Douglas Weber shall, on or before June 29, 2012, submit an Affidavit explaining in detail (1) which DOC facilities have, from 2006 to date, had onsite law libraries; (2) provide an updated list of legal books, authorities, treatises, statutes, etc. which have been provided in said law libraries from 2006 to date; (3) provide a list of legal forms (§ 1983 conditions of confinement, § 2254 habeas corpus, etc.) which are customarily available and provided to prisoners; and (3) explain in which DOC facilities Mr. Hanic has been housed since his incarceration began until the date his federal habeas petition was filed (February 24, 2012).

Dated this 6 day of June, 2012.

BY THE COURT:



John E. Sirko
United States Magistrate Judge